

BEFORE THE  
SURFACE TRANSPORTATION BOARD

234568

TOTAL PETROCHEMICALS & REFINING  
USA, LLC

Complainant,

v.

CSX TRANSPORTATION, INC.

Defendant.

ENTERED  
Office of Proceedings  
July 24, 2013  
Part of  
Public Record

Docket No. NOR 42121

CSXT'S REPLY TO TPI'S PETITION FOR RECONSIDERATION

Defendant CSX Transportation, Inc. ("CSXT") respectfully submits this Reply to Complainant Total Petrochemicals & Refining USA, LLC's ("TPI's") Petition for Reconsideration (filed June 20, 2013) ("TPI Petition") of the Board's decision in the market dominance phase of this case. *TPI v. CSXT*, STB Docket No. 42121 (May 31, 2013) ("*Decision*"). While the Decision indeed contains material errors—primarily related to the Board's adoption of an unlawful and economically irrational "limit price" rule for determining qualitative market dominance—TPI's Petition does not identify any such errors.<sup>1</sup> First, TPI's Petition asks the Board to reconsider its decision to reject certain categories of intangible "costs" posited by TPI in an attempt to inflate the costs of competitive options. The Board was right to reject TPI's evidence, which rested on the assertion that replacing rail service with rail-truck service would increase transit time by {{ }} CSXT presented ample evidence that TPI's transit time estimates were inflated and not credible, and that a seamless rail-truck

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<sup>1</sup> CSXT's pending Petition for Reconsideration explains why this new methodology constitutes material error and warrants reconsideration because it violates the statute, was done without a notice-and-comment rulemaking, and is otherwise arbitrary and unlawful. See CSXT Petition for Reconsideration, STB Docket No. 42121 (filed June 20, 2013) ("CSXT Petition").

transload service could be performed at speeds comparable to rail-only service. The Board's acceptance of CSXT's evidence on these points was well-reasoned and well-supported, and it contained no material errors.

The second claim TPI raises in its Petition is that Cherokee Carpets, one of the customers on lane B-112, ought to be treated the same as another customer on that lane because, as it did for that customer, {{

}} Lane

B-112 challenged rates to the CSX TRANSFLO facility in Dalton, which means that Cherokee is actually served by trucks. See CSXT Reply I-4–5. The notion that it would be practically infeasible for a customer who receives truck shipments from a TRANSFLO facility to instead receive truck shipments originating at an NS transload facility is preposterous. {{

}} See CSXT Petition at 18–20.

**I. THE BOARD DID NOT MATERIALLY ERR BY REJECTING TPI'S INFLATED AND UNSUPPORTED COSTS.**

The primary argument in TPI's Petition is an attempt to relitigate one of the most hotly contested and thoroughly briefed issues in this case: the question of whether TPI can establish market dominance by alleging that its customers "prefer" rail service. While TPI disguises this purpose by alleging that its Petition concerns the Board's failure to acknowledge certain costs, its Petition boils down to an allegation that CSXT's proposed rail-truck transload service would not be accepted by TPI's customers because of their alleged preference for rail service. Therefore TPI claims that the only alternative is to "preposition" railcars as TPI does with some truck-

served customers today, and thus that the Board ought to accept the terminal, rail car, and inventory carrying costs that TPI says would result from such prepositioning. The Board's rulings on these issues were well grounded and supported by the evidence, and TPI's attempt to relitigate these issues should be rejected.

**A. The Board Did Not Materially Err By Rejecting TPI's Argument That Customer Preference Requires "Prepositioning" of Railcars.**

The first reason that TPI's Petition fails is that it does not show that the Board materially erred by rejecting its customer preference argument. TPI's Petition correctly notes that there was "a fundamental difference between the transload alternatives proposed by CSXT and those proposed by TPI." TPI Petition at 3. CSXT proposed that many of the CSXT rail movements whose rates TPI challenged could be replaced by a rail shipment on another carrier to a transloading facility, from which trucks could deliver the plastics to the final destination. CSXT showed that similar rail-truck shipments of plastics occur in the real world, and indeed that TPI itself often utilizes rail-truck transloading. *See* CSXT Reply II-28–33; CSXT Reply Ex. 1 (video exhibit showing rail-truck transload for TPI shipment). CSXT also showed that the transit times for a rail-truck shipment to a TPI customer would not be substantially different from the transit times for an all-rail shipment. *See* CSXT Reply II-73–75. This evidence accords with basic common sense—replacing the last leg of a rail movement (which typically would be a local train movement requiring an additional switch) with transloading and truck delivery would not have a significant impact on overall transit time. Indeed, TPI admits that CSXT's transload options would only require "a day or two for rail car switching at the terminal and a day or two for bulk truck loading and transportation." TPI Petition at 5–6 n.8.

TPI, on the other hand, asserted that any rail-truck transload service would require railcars to wait at transload terminals for an average of {{ }} and thus would incur

substantial terminal, rail car, and inventory costs. TPI Opening II-B-30–31, 33–34. TPI’s argument appeared to be that its customers’ “preference” for rail meant that they would not accept truck deliveries unless those deliveries were expedited, and that the only way to expedite truck deliveries would be to preposition railcars at bulk terminals. TPI Rebuttal II-B-93.

Simply put, CSXT proposed streamlined transloading options, in which a customer ordering a rail carload of plastics could instead be served by delivering that railcar to a transload terminal and transloading into trucks for delivery. TPI, on the other hand, claimed that customer preferences only permitted “preposition transloading” in which TPI would store railcars of inventory at transload terminals to await customer orders.

The Board firmly rejected TPI’s “customer preference” argument, and with it TPI’s argument that the Board should accept its “prepositioning” model for rail-truck transload alternatives. The Board held that “the evidence presented by TPI regarding customer preferences/requirements is insufficient to demonstrate that delivery of the issue commodities by truck to TPI’s customers is infeasible.” *Decision* at 41. The *Decision* carefully reviewed and rejected each category of evidence that TPI presented in support of its “customer preference” argument. The Board based its rejection, in part, on the substantial evidence that “significant volumes of the issue commodities shipped from TPI to its customer via truck.” *Id.*

TPI’s Petition does not present any new evidence or arguments to explain why the Board’s rejection of its customer preference argument was incorrect; instead, TPI simply repeats points that it already made about how TPI’s customers allegedly feel about truck service and about how truck service would fail to meet “customer[] expectations.” *See* TPI Petition at 4–7. The Board was right to reject those arguments before and to hold that CSXT’s streamlined transloading option was a practically feasible alternative.

Moreover, the Board correctly found that “prepositioning” was not essential for transloading to be an effective alternative to rail service. *Decision* at 54. While prepositioning would allow faster service after a customer order (because the customer could be immediately served by a truck shipment from a prepositioned railcar), transloading does not have to be significantly faster than CSXT rail service to be competitive with that rail service. TPI’s accusation that the Board “has this backwards” when it observed that prepositioning “allows TPI to provide a higher quality service than rail provides” misses the point of the Board’s holding. TPI Petition at 4 (quoting *Decision* at 54). By “higher quality service,” the Board plainly was referring to the speed of truck service from a prepositioned railcar, which TPI itself admits would take 48 hours. The Board was right to conclude that the speed gained from prepositioning was a service advantage over all-rail transportation that “should not be part of a direct comparison of the costs of the transportation alternatives.” *Decision* at 54.

In short, the *Decision* was right to reject TPI’s argument that customer preference made CSXT’s streamlined transloading options infeasible, and the Petition shows no material error in that *Decision*.

**B. The Board Did Not Materially Err By Rejecting TPI’s Inflated Cost Estimates.**

The Board’s rejection of TPI’s added costs should be rejected for the independent reason that those costs are inflated and overstated. TPI asserts that the Board miscalculated the limit price for the transportation alternatives offered by the parties because it failed to include bulk terminal costs; inventory carrying costs; and certain rail car costs. TPI Petition at 2. But all of these costs rest on the assumption that {{ }} of transit time would have to be added to account for the prepositioning of each shipment. Not only is prepositioning unnecessary, as

demonstrated above, the Board correctly held that these costs were “excessive” and that there was no evidence that TPI would incur them. *Decision* at 54, 55, 57.<sup>2</sup>

**1. TPI’s Proposed Bulk Terminal Storage Costs Were Unnecessary And Inflated.**

The first cost TPI claims the Board failed to include in its calculation of the cost of the limit price alternative is for bulk terminal storage. TPI claims that it must preposition rail cars and incur bulk terminal storage costs for an average of {{ }} per rail car. TPI Petition at 7. TPI’s contention is not a material error, but rather an expression of disagreement with what the Board decided on the basis of the evidence.

CSXT demonstrated in its Reply Evidence that TPI failed to explain why its operations were so inefficient as to necessitate such long dwell times. *See* CSXT Reply II-72. CSXT further proved that the average dwell time at its own terminals was significantly shorter, just {{ }}, an average driven up by outliers who stored cars for many months. *Id.*; CSXT Reply Ex. II-B-14. After considering the evidence of both parties, the Board concluded “that TPI’s bulk terminal storage fees are excessive and will not include them in [its] calculation of limit prices for transloading options.” *Decision* at 54. The Board explained that TPI’s costs were “inflated” and that “the product can move through bulk terminals more quickly than instances where TPI prepositions the product for customer service purposes.” *Id.* The Board is correct, and TPI’s restatement of the arguments it made in two rounds of evidence cannot convert the Board’s well-reasoned ruling on this point into a material error.

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<sup>2</sup> TPI’s citation of *FMC Wyoming Corp. v. Union Pacific R.R. Co.*, 4 S.T.B. 699 (2000), for the proposition that the Board must consider costs of converting to trucks is irrelevant. TPI Petition at 3. The Board did consider the costs TPI has again brought up on reconsideration; it just found that those costs were unnecessary and inflated. The language quoted from *FMC* that the Board should “consider” additional costs does not mean the Board must accept, in total, unsupported evidence advanced by a complainant.

**2. TPI's Proposed Inventory Carrying Costs Were Unsupported.**

TPI also argues that the Board failed to include inventory carrying costs. TPI Petition at 8. According to TPI, additional transloading would increase its inventory carrying costs because it bills rail customers immediately but does not invoice truck customers until the truck ships from the bulk terminal. *See* TPI Opening II-B-32. CSXT explained in reply that the inventory carrying costs TPI was claiming were an accounting gimmick, because TPI would receive the same amount of revenue for each transloaded shipment as it currently does and its actual out-of-pocket costs would approximate its current out-of-pocket costs. *See* CSXT Reply II-77. CSXT also presented evidence that {{

}} *Id.* at II-78–80.

The Board's Decision correctly refused to consider inventory carrying costs, because TPI had failed to show "that the inventory will spend more time in the transportation chain." *Decision* at 57. TPI's Petition does not seriously contest this holding, but says that because its invoicing practices would shift (on paper) the inventory carrying costs during a rail-truck transload, such costs should be incorporated into limit price calculations. TPI Petition at 8–9. In the first place, the inventory carrying costs that TPI provided to the Board are all hopelessly inflated, because they assume {{ }} of additional wait time at a bulk terminal. Moreover, the Board should not incorporate an intangible inventory carrying cost that {{

}} See CSXT Reply II-77–80. The Board did not materially err by rejecting these costs.<sup>3</sup>

### **3. TPI’s Proposed Rail Car Costs Have Been Rejected By The Board.**

TPI’s final claim is that the Board failed to include a cost adjustment “for the length of time that rail cars are dedicated to customers.” TPI Petition at 10. TPI suggests that there would be increased lease and maintenance costs because it would need additional cars to preposition its product. *Id.*

TPI’s cost estimate is again inflated by its absurdly lengthy terminal dwell time of {{  
}} per railcar. See CSXT Reply II-73. CSXT demonstrated in Reply that when a reasonable dwell time was used, TPI would actually save money by switching to alternative transportation in some lanes. See *id.* at II-74. After considering the parties’ evidence, the Board reasonably concluded that TPI’s calculations were “inflated” and found that hold time at bulk terminals would be the same as the hold time at customers’ facilities currently, resulting in no net increase in time and costs. *Decision* at 54. Because the Board correctly rejected TPI’s argument that customer preference required prepositioning, it did not materially err by rejecting TPI’s inflated rail car costs.

## **II. TPI’s LANE-SPECIFIC ARGUMENT DEMONSTRATES THE IRREPARABLE FLAWS OF ITS {{ }}**

TPI’s second point on reconsideration is that the Board mistakenly treated similarly situated customers in Lane B-112 differently. TPI argues that one of the customers in Lane B-

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<sup>3</sup> TPI’s citation of cases where inventory carrying costs were considered is irrelevant. See TPI Petition at 9–10 (citing *CF Indus., Inc. v. Koch Pipeline Co., L.P.*, 4 S.T.B. 637 (2000)). As the Board explained, while inventory carrying costs “are a legitimate factor to consider,” “in this case the record does not support a finding that the total inventory carrying costs will increase materially.” *Decision* at 57. Inventory carrying costs were considered but not included by the Board because the record in this case did not support them.



112 had {{

}} TPI Petition at 11–12. The Board

relied {{ }} to find that another customer in the same lane had no feasible

transportation alternative and was not subject to the limit price analysis. TPI is correct that

Cherokee Carpets {{ }} But TPI's Petition only

demonstrates the inaccuracy of both Cherokee Carpets' {{ }} and the unreliable

nature of all of the {{ }} TPI submitted.

{{

}} *Id.* TPI does not explain how or why

{{ }} should be credited when Cherokee {{

}}<sup>4</sup> According to TPI's Opening Evidence, {{

.}}

The alternative proposed by CSXT would simply replace a rail shipment to a CSX TRANSFLO terminal with a rail shipment to a NS-served Thoroughbred Bulk Terminal and {{

}} See CSXT Reply Ex. II-B-2 (Lane B-112 description).

Because {{

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<sup>4</sup> In fact, Cherokee is the transloading customer profiled in CSXT Reply Ex. II-B-1. Exhibit II-B-1 is a video exhibit that captures the actual transloading of plastic pellets from a TPI railcar to a {{ }} truck destined for Cherokee.

}}

This complete inconsistency calls into question not only the veracity of Cherokee's {{

}} but all of the other {{ }} relied upon by TPI as well.

TPI's {{

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### CONCLUSION

For the foregoing reasons, TPI's Petition for Reconsideration should be denied.

Respectfully submitted,



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Dated: July 24, 2013

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24th day of July, 2013, I served a copy of the foregoing CSX Transportation, Inc.'s Reply to TPI's Petition for Reconsideration by email and hand-delivery upon:

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